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 (erroneously named herein as CLEARLAKE POLICE DEPARTMENT)

IN THE UNITED STATES DISTRICT COURT FOR
 THE NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

DAVID DAVIS and PAGE GEARHART-DAVIS	)	Case No. C 07-03365 EDL
PRO-SE,)	
	)	DEFENDANT CITY OF
Plaintiffs,	)	CLEARLAKE'S OPPOSITION TO
	)	PLAINTIFFS' MOTION TO
vs.	)	COMPEL PRODUCTION OF
	)	WITHHELD DOCUMENTS &
	)	OFFICERS' PERSONNEL
CLEARLAKE POLICE DEPARTMENT,	)	RECORDS
)	
Defendants.	)	Date: May 13, 2008
	)	Time: 9:00 a.m.
	)	Courtroom: E, 15th Floor
)	
	)	Judge: Hon. Elizabeth D.
	)	LaPorte

I. INTRODUCTION

Plaintiff DAVID DAVIS AND PAGE GEARHART-DAVIS' ("Plaintiffs") attempts to meet and confer regarding the issues underlying their present motion consisted of leaving two voice-mail messages with counsel for defendant CITY OF CLEARLAKE (the "City") on April 1 and 2, 2008. Counsel for the City attempted to return these calls on April 2 and 3, 2008, but received no answer. On April 4, 2008, counsel for the City reached plaintiff Page Gearhart-Davis by telephone, but Ms. Gearhart-Davis was unable to discuss the issues at that time. Ms. Gearhart-Davis and counsel for the City first had the opportunity to discuss the issues underlying Plaintiffs' motion on April 7, 2008, by

1 which time Plaintiffs had already filed their present motion.

2 Based on Plaintiffs' motion and a number of ensuing telephone conversations, the parties have
3 been able to clarify their respective positions and interpretations with respect to Plaintiffs' request for
4 production. As a result, the City has produced audio recordings relating to the complaints Plaintiffs filed
5 with the Clearlake Police Department in 2006 and 2007. With respect to the remaining issues, the City
6 has already produced responsive documents or has asserted objections that include a description of the
7 materials withheld. In their present motion, Plaintiffs do not set forth reasons supporting their
8 conclusion that the withheld materials are relevant to their claim. Accordingly, the City respectfully
9 requests that the Court deny Plaintiffs' motion with respect to those documents.

10 **II. STATEMENT OF RELEVANT FACTS**

11 Plaintiffs' request for production of documents, which underlies their present motion to compel,
12 contains requests for four categories of items: (1) materials, including recordings, pertaining to Clearlake
13 Police Officers' contacts with Plaintiffs from August to December, 2006 (requests # 1-6); (2) "dispatch
14 record" checks from those same contacts (requests # 7-13); (3) materials, including recordings,
15 pertaining to the complaints Plaintiffs filed with the Clearlake Police Department regarding their
16 contacts with the officers, and the ensuing investigations (requests # 14-18); and (4) personnel files of
17 various Clearlake Police Officers (requests # 18-26). (*See* Exhibit B to Declaration of Dirk D. Larsen
18 ["Larsen Dec."] filed herewith.)

19 The City responded to the request as follows: (1) because the Clearlake Police Department did
20 not renew its contract with the voice-recording provider, due to financial constraints, the City was unable
21 to access recordings of officers' contacts with Plaintiffs; (2) the City had already produced responsive
22 documents as part of its initial disclosures pursuant to F.R.C.P. 26(a), and any other documents related
23 to Plaintiffs' citations would be located in the court file of the County of Lake; (3) the City produced
24 redacted documents pertaining to Plaintiffs' complaints against the Department and the ensuing
25 investigations; and (4) the City produced the officers' personnel files, but withheld records of third-party
26 complaints not relevant to the subject matter of the present action. With respect to the withheld
27 complaints, the City provided a description of their subject matter sufficient to inform Plaintiffs of the
28 nature of the complaint and the rationale for the City's objection. (*See* Exhibit C to Larsen Dec. at

1 4:11-6:16.)

2 Plaintiffs' attempts to meet and confer regarding the issues underlying their present motion
3 consisted of leaving two voice-mail messages with counsel for defendant CITY OF CLEARLAKE (the
4 "City") on April 1 and 2, 2008. Counsel for the City attempted to return these calls on April 2 and 3,
5 2008, but received no answer. On April 4, 2008, counsel for the City reached plaintiff Page Gearhart-
6 Davis by telephone, but Ms. Gearhart-Davis was unable to discuss the issues at that time. Ms. Gearhart-
7 Davis and counsel for the City first had the opportunity to discuss the issues underlying Plaintiffs'
8 motion on April 7, 2008, by which time Plaintiffs had already filed their present motion. (Larsen Dec.,
9 ¶ 3.)

10 Based on Plaintiffs' motion and a number of ensuing telephone conversations, the parties have
11 been able to clarify their respective positions and interpretations with respect to Plaintiffs' request for
12 production. Plaintiffs clarified that their request for audio recordings included recordings made during
13 the investigation of Plaintiffs' complaint. (Larsen Dec., ¶ 4.) Lieutenant Michael Hermann of the
14 Clearlake Police Department had previously understood that request to encompass only the recordings
15 made in the patrol cars, which were inaccessible. On April 14, 2008, counsel for the City sent Plaintiffs
16 a letter stating that the City would determine whether any such complaint-related recordings exist and
17 produce them as applicable. The letter also stressed that, other than such recordings, the City had
18 already produced or identified all other responsive materials. (Larsen Dec., ¶ 5; Exhibit E to Larsen
19 Dec.) Based on Plaintiffs' clarification, the City produced to Plaintiffs the following recordings on April
20 21, 2008: interview of plaintiff David Davis by Clearlake Police Captain Larsen; tape recording and
21 photographs of David Davis from August 3, 2006; interview of Plaintiffs on January 12, 2007; and
22 interviews of Clearlake Police Officers Hobbs, Miller, Hardisty and Sergeant Celli of August 24, 2006.
23 (Larsen Dec., ¶ 6; Exhibit F to Larsen Dec.)

24 Plaintiffs also clarified that their reference to "dispatch record" checks in requests # 7-13 seeks
25 records of the officers' contacts with the Clearlake Police Department or other agencies while the stops
26 of Plaintiffs were taking place. The City has provided all such records in its possession as part of its
27 initial disclosure pursuant to F.R.C.P. 26(a). The City's reference to Lake County court records in its
28 responses refers to all other materials associated with the citations issued, and was based on a

1 misunderstanding of Plaintiffs' term "dispatch record." (Larsen Dec., ¶ 7; Exhibit A to Larsen Dec.)

2 **III. ARGUMENT**

3 **A. The City Has Already Produced or Identified All Responsive Materials.**

4 First, with respect to Plaintiffs' request for the production of audio, video and documents
5 pertaining to Clearlake Police Officers' stops of Plaintiffs (requests # 1-6), the City has already produced
6 responsive materials in its possession or stated that it does not have responsive documents in its
7 possession. It produced documents associated with those stops as part of its initial disclosure pursuant to
8 F.R.C.P. 26. (Larsen Dec., ¶ 8; Exhibit A to Larsen Dec.) In its response to Plaintiffs' request for
9 production, it explained that any audio recordings that may have been made are inaccessible. (Larsen
10 Dec., ¶ 10; Exhibit C to Larsen Dec. at 2:1-3:2; Exhibit D to Larsen Dec.) The City has thus satisfied
11 the requirements of F.R.C.P. 34.

12 Second, with respect to Plaintiffs' request for the production of "dispatch records" associated
13 with the Clearlake Police Officers' stops of Plaintiffs (requests # 7-13), the City has already produced
14 responsive documents as part of its initial disclosure pursuant to F.R.C.P. 26. (Larsen Dec., ¶ 7; Exhibit
15 A to Larsen Dec.) In its response to Plaintiffs' request for production, the City made reference to the
16 Rule 26 disclosure and even referred Plaintiffs to the Lake County court file for additional information.
17 (Exhibit C to Larsen Dec. at 3:3-4:10.) Apparently, Plaintiffs mistakenly believed that the Lake County
18 court file would contain what they believed to be "dispatch records." Now that Plaintiffs have clarified
19 that the term "dispatch records" refers to any records of communication between its officers and any
20 other agencies at the time of Plaintiffs' stops, the City can again refer Plaintiffs to its Rule 26 disclosure,
21 which contains any such records in the City's possession. Accordingly, the City has again satisfied the
22 requirements of F.R.C.P. 34.

23 Third, with respect to Plaintiffs' request for the production of materials related to their
24 complaints regarding Clearlake Police Officer conduct and the ensuing investigations (requests # 14-18),
25 the City official who compiled the information did not initially understand the request to encompass
26 recordings made during the complaint and interview process. Now that Plaintiffs have clarified that the
27 request does indeed refer to such recordings, the City produced responsive recordings in its possession
28 on April 21, 2008. (Larsen Dec., ¶ 6; Exhibit F to Larsen Dec.) Plaintiffs' motion to compel the

1 production of these recordings is thus moot.

2 Finally, with respect to Plaintiffs' request for the production of certain Clearlake Police Officers'
3 personnel files, including complaints lodged against those officers (requests # 19-26), the City produced
4 responsive documents in its response to Plaintiffs' request. (Exhibit C to Larsen Dec. at 4:11-6:16.) The
5 City objected to the production of complaints not related to the subject matter of this litigation, and even
6 went so far as to identify the nature of the complaint and the race of the complainant so as to enable
7 Plaintiffs to determine that the complaint did not involve racial profiling, harassment or retaliation.
8 (Exhibit C to Larsen Dec. at 4:11-6:16.) Accordingly, the City has satisfied the requirements of
9 F.R.C.P. 34 with respect to these requests.

10 **B. Plaintiffs Do Not Set Forth Reasons Supporting Their Conclusion That the**
11 **Withheld Portions of the Officers' Personnel Files Are Relevant to Their Claims.**

12 In its response to Plaintiffs' request for production, the City produced the personnel files of the
13 Clearlake Police Officers whom Plaintiffs listed in their request. (Exhibit C to Larsen Dec. at 4:11-6:16.)
14 The City objected, on the ground of relevance, to the production of complaints against those officers
15 lodged by various individuals. (Exhibit C to Larsen Dec. at 4:11-6:16.) In its objections, the City
16 identified the nature of the complaint against the officer as well as the ethnicity of the complainant.
17 (Exhibit C to Larsen Dec. at 4:11-6:16.) The City thus provided Plaintiffs with sufficient information to
18 determine whether each complaint was relevant to Plaintiff's claims of racial profiling, harassment and
19 retaliation.


20 In their motion, Plaintiffs simply conclude that "[d]ocument production is relevant to the claim
21 and reasonably calculated to lead to admissible evidence under the Federal Rules of Civil Procedure
22 26(b)." (Plaintiffs' Motion to Compel at 13:24-26.) However, they provide no reasons in support of this
23 conclusion. Presumably having reviewed the City's responses, Plaintiffs are in a position to determine
24 whether each complaint may exhibit indicators of the racial profiling, harassment and retaliation that
25 form the bases of Plaintiffs' claims against the City. But they do not argue that such indicators exist.
26 Accordingly, Plaintiffs have provided neither the City nor the Court with any reasons that would compel,
27 or even support, the production of those complaints. Plaintiffs' motion to compel the production of
28 those complaints should thus be denied.

1 **IV. CONCLUSION**

2 For the foregoing reasons, the City respectfully requests that the Court deny Plaintiffs' motion to
3 compel production of withheld documents and officers' personnel records.

4
5 Dated: April 22, 2008

6 LOW, BALL & LYNCH

7
8 By 
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10 DIRK D. LARSEN
11 Attorneys for Defendant
12 CITY OF CLEARLAKE
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